

# SPECIAL MEETING OF THE MILPITAS CITY COUNCIL

For assistance in the following languages, you may call:

Đối với Việt Nam, gọi 408-586-3122

Para sa Tagalog, tumawag sa 408-586-3051

Para español, llame 408-586-3232

# **CITY OF MILPITAS - NOTICE OF SPECIAL MEETING**

NOTICE IS HEREBY GIVEN that a Special Meeting of the Milpitas City Council will be held at 5:00 p.m. on Tuesday, May 5, 2020 via TELECONFERENCE (no physical meeting space). Submit any <u>Public Forum comments</u> to be read aloud via form online:

https://www.ci.milpitas.ca.gov/spcomment/

# Meeting shall be livestreamed - Go to:

Facebook: https://www.facebook.com/CityofMilpitas/ YouTube: https://www.ci.milpitas.ca.gov/youtube Web Streaming: https://www.ci.milpitas.ca.gov/webstreaming

> AGENDA TUESDAY, MAY 5, 2020 MILPITAS, CA 5:00 PM

# CALL TO ORDER / ROLL CALL / PLEDGE

#### **PUBLIC FORUM**

Those interested are invited to address City Council on any subject not on tonight's agenda. Speakers may submit written remarks to be read aloud by the City Clerk, limited to three minutes or less. As an item not listed on the agenda, no response is required from City staff or the Council and no action can be taken. Council may instruct the City Manager to place the item on a future meeting agenda.

Form available to submit comments here: https://www.ci.milpitas.ca.gov/spcomment/

#### **AGENDA ITEMS**

1. Accept Report on COVID-19 testing in Milpitas, and Approve and Authorize the City Manager to enter into a formal agreement, Memorandum of Understanding or other contractual agreement with IGeneX to provide and conduct tests for mobile COVID-19 testing (Staff Contact: Geoffrey Maloon, 408-586-2818 and Ashwini Kantak, 408-586-3053)

Recommendation: Accept report on COVID-19 testing in Milpitas and approve and authorize the City Manager to enter into a formal agreement, MOU, or other contractual agreement with IGeneX to provide and conduct tests for mobile COVID-19 testing for Milpitas businesses and residents, in a form approved by the City Attorney.

2. Receive Staff Report and Provide Direction on the 2020 Fourth of July Fireworks Display and Virtual Event (Staff Contact: Renee Lorentzen, 408-586-3409)

<u>Recommendation:</u> Receive staff report and provide direction on the 2020 Fourth of July Fireworks display and virtual events.

3. Receive staff report and approve staff recommendation to provide funding in the amount of \$3,000 which will be distributed evenly to Lions Executive Club and Milpitas Rotary Club for the purchase of face covering supplies for community need (Staff Contact: Renee Lorentzen, 408-586-3409)

<u>Recommendation:</u> Receive staff report and approve staff recommendation to provide funding in the amount of \$3,000 which will be distributed evenly to Lions Executive Club and Milpitas Rotary Club for the purchase of face covering supplies for community need.

### **ADJOURNMENT**

#### MILPITAS CITY COUNCIL CODE OF CONDUCT

- Be respectful and courteous (words, tone, and body language).
- · Model civility.
- Avoid surprises.
- Praise publicly and criticize privately.
- Focus on the issue, not the person.
- Refrain from using electronic devices while on the Council dais.
- Share information with all Councilmembers in advance of Council meetings.
- Disclose conflicts of interest and affiliations related to agenda items.
- Separate governing from campaigning.
- The Council speaks with one voice after making policy on issues.
- Respect the line between policy and administration.
- Council will hold one another accountable to comply with Code of Conduct.

#### KNOW YOUR RIGHTS UNDER THE OPEN GOVERNMENT ORDINANCE

Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions and other City agencies exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and City operations are open to the people's review. For more information on your rights under the Open Government Ordinance or to report a violation, contact the City Attorney's office at Milpitas City Hall, 455 E. Calaveras Blvd., Milpitas, CA 95035

e-mail:cdiaz@ci.milpitas.ca.gov / Phone: 408-586-3040

The Open Government Ordinance is codified in the Milpitas Municipal Code as Title I Chapter 310 and is available online at the City's website www.ci.milpitas.ca.gov by selecting the Milpitas Municipal Code link.

Materials related to an item on this agenda submitted to the City Council after initial distribution of the agenda packet are available for public inspection at the City Clerk's office at Milpitas City Hall, 3rd floor 455 E. Calaveras Blvd.,

Milpitas and on City website. City Council agendas and related materials can be viewed online:

www.ci.milpitas.ca.gov/government/council/agenda\_minutes.asp (select meeting date)

# APPLY TO SERVE ON A CITY COMMISSION

Commission application forms are available online at <a href="www.ci.milpitas.ca.gov">www.ci.milpitas.ca.gov</a> or at Milpitas City Hall.

Contact the City Clerk's office at 408-586-3003 for more information.

If you need assistance, per the Americans with Disabilities Act, for any City of Milpitas public meeting, please call the City Clerk at 408-586-3001 or send an e-mail to <a href="mailto:mlavelle@ci.milpitas.ca.gov">mlavelle@ci.milpitas.ca.gov</a> prior to the meeting. You may request a larger font agenda or arrange for mobility assistance.



# CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Accept Report on COVID-19 testing in Milpitas, and Approve and Authorize the City Manager to enter into a formal agreement, Memorandum of Understanding or other contractual agreement with IGeneX to provide and conduct tests for mobile COVID-19 testing
Category:	Public Safety
Meeting Date:	5/5/2020
Staff Contacts:	Geoffrey Maloon, 408-586-2818 Ashwini Kantak, 408-586-3053
Recommendation:	Accept report on COVID-19 testing in Milpitas and approve and authorize the City Manager to enter into a formal agreement, MOU, or other contractual agreement with IGeneX to provide and conduct tests for mobile COVID-19 testing for Milpitas businesses and residents, in a form approved by the City Attorney.

# **Background:**

COVID-19 has severely impacted nations and communities across the globe. There is universal agreement among public health experts, scientists, physicians and emergency managers that widespread testing is one of the keys to lifting stay-at-home/shelter-in-place orders. Santa Clara County and the United States are lagging in the availability of widespread, accessible testing which is hampering our ability to lift these orders.

Milpitas Fire Department and Emergency Management staff have been working with the County hospital system, County Office of Emergency Services and a private Milpitas based medical testing lab named IGeneX to establish testing capability in the City of Milpitas. Although a COVID-19 testing site has been established in Milpitas since April 15, testing is only available for Valley Medical Center patients and widespread testing of Milpitas residents is not available at this time. To date, the County testing site is averaging 2-6 tests per day, operating between 8:00 AM and 12 Noon Monday through Friday.

At the April 21 City Council meeting, staff presented information on the current testing site and discussed potential options to expand testing at this site in the future. Council directed staff to bring back additional information and potential costs to accomplish expanded testing.

# **Analysis:**

City staff met with City of Fremont staff to obtain information about the operations and costs of the Fremont testing site, that provided free testing to people regardless of place of residence. The discussion identified some issues related to costs and staffing. The Fremont testing site attracted a significant amount of people from other cities and counties and did not provide targeted testing for Fremont residents. As a result, Fremont recently decided to transition to a mobile testing model, starting on May 4. The advantages of this new model include improved site logistics, fewer personnel commitments, substantially lower costs and better targeting of vulnerable populations in Fremont.

The proposed Milpitas testing concept is being designed to mirror the Fremont mobile testing model. Staff have already identified some vulnerable and at-risk populations, such as homeless, elderly care facilities, senior mobile home parks and employees of essential businesses still in operation or returning to operations. The mobile testing unit will set up the testing site at the identified locations with concentrations of vulnerable persons and provide testing to people that have an appointment and that have been prescreened.

Staff will identify vulnerable populations in the City and locate testing facilities (on a day-by-day basis) close to these populations, utilizing the City's recently acquired Fire ambulance for mobile testing operations. The ambulance would be staffed by three fire department EMT's/paramedics with capacity to target 100 test per day. At the end of each day, the test kits will be delivered to the lab for processing with results expected in 24 hours or less. The mobile testing unit will operate from 8AM until 6PM Monday though Friday. Overtime is estimated at 12 hours per day per firefighter. IGeneX will be setting appointments, collecting payment from insurance or FEMA for the testing and providing the test kits. Staff is currently working with Dr. Miller from Santa Clara County to obtain approval for the protocol

Tests will be available to Milpitas residents and some essential businesses and workers based on standard screening protocols such as confirmed exposure, high risk population, present signs and symptoms of illness.

The tests from IGeneX have received FDA approval. IGeneX is currently providing these tests to medical providers throughout the Country on a contract basis. As a key community partner, IGeneX has developed a model through which they are able to make these tests available to patients, with no upfront costs, covered by Medicare and certain insurance carriers. IGeneX is unable to process those patients who belong to an HMO such as Kaiser, which requires their participants to have COVID-19 tests performed directly by them. For those individuals who do not have insurance, IGeneX will seek reimbursement from the Health and Human Services (HHS) COVID-19 relief fund.

In the proposed mobile testing model, IGeneX will be setting up appointments, collecting payment from insurance or HHS for the testing, providing the test kits, and processing the tests. Test results will be certified and communicated to individuals by the IGeneX lab in accordance with all required medical privacy regulations. People receiving testing will be asked to sign a liability waiver to protect the City and IGeneX. Prescreening will focus on target populations determined by City staff. The prescreening criteria, determined by County and other public health guidance, will be provided to the appointment personnel at IGeneX and will utilize a point system to determine eligibility. All COVID-19 tests will require an authorized signature for the test to be performed, per current State of California requirements.

Current COVID-19 testing in the City of Milpitas that is solely dedicated to the protection of Milpitas residents and the Milpitas business community is nearly non-existent. The addition of the mobile testing model that can target the most vulnerable populations close to their homes and businesses will help protect our community and citizens from the spread of the disease and assist our business community with re-entry.

The City will need to cover the costs associated with staff time. Assuming a start date of May 18 through June 30, 2020 costs are estimated to be approximately \$75,000. With careful consideration of budgetary constraints, staff is recommending using the appropriated Contingency Reserve to fund these costs. Staff will be seeking reimbursement from FEMA. It is anticipated that this effort qualifies as a FEMA reimbursable activity under the category of temporary medical facility. If FEMA determines this effort to be an eligible activity, it reimburses at least 75% and may recommend an increase up to 90% of eligible costs. Additionally, FEMA reimburses up to 5% of management costs. The remaining costs will be borne by the General Fund. If FEMA does not qualify this effort as eligible for reimbursement, the General Fund will have to cover the full cost.

# Next Steps

There are several steps that need to be completed prior to starting the mobile testing:

- 1. Receive approval from the County for City staff to administer the tests
- 2. Develop and execute a contractual agreement with IGeneX, in a form approved by the City Attorney
- 3. Finalize the policy and procedure that will guide the testing personnel
- 4. Finalize a schedule of Fire department staff to administer the tests
- 5. Train all testing personnel to administer the tests.

#### **Policy Alternative:**

Alternative: Do not authorize and fund the mobile COVID-19 testing concept.

Pros: \$75,000 will remain in the City's contingency reserves to fulfill budgetary shortfalls related to the COVID-19 pandemic.

Cons: Reduced testing capacity for Milpitas residents and businesses and possible delays in re-entry plans for both.

Reason not recommended: The City currently does not have widespread testing available specifically for Milpitas residents and business community. Since widespread COVID-19 testing is considered key to transitioning back to normal operations, not providing a targeted mobile testing will further hinder the re-entry plans for the community.

# **Fiscal Impact:**

The fiscal impact will be Fire Department overtime costs and personal protective equipment for testing personnel. Total fiscal impact through the end of the fiscal year is \$75,000.00. Money will be expended from the appropriated Contingency Reserve account. It is anticipated that this effort qualifies as a FEMA reimbursable activity under the category of temporary medical facility. If FEMA determines this effort to be an eligible activity, it reimburses at least 75% and may recommend an increase up to 90% of eligible costs. Additionally, FEMA reimburses up to 5% of management costs. The remaining costs will be borne by the General Fund. If FEMA does not qualify this effort as eligible for reimbursement, the General Fund will have to cover the full cost.

# **California Environmental Quality Act**:

Not applicable.

# **Recommendation:**

Accept report on COVID-19 testing in Milpitas, and approve and authorize the City Manager to enter into a formal agreement, MOU, or other contractual agreement with IGeneX to provide and conduct tests for mobile COVID-19 testing for Milpitas businesses and residents, in a form approved by the City Attorney.

#### **Attachment:**

None



# CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Receive Staff Report and Provide Direction on the 2020 Fourth of July Fireworks Display and Virtual Event
Category:	Community Services and Sustainable Infrastructure
Meeting Date:	5/5/2020
Staff Contact:	Renee Lorentzen, 408-586-3409
Recommendation:	Receive staff report and provide direction on the 2020 Fourth of July Fireworks display and virtual events.

# **Background:**

The City of Milpitas annually celebrates the Fourth of July at a signature special event attracting as many as 12,000+ residents and Bay Area visitors to the Milpitas Sports Center complex. Attendees enjoy a pool party, evening concert and a professional Fireworks show. However, due to the current COVID-19 pandemic, Santa Clara County Public Health restrictions prohibit large gatherings that preclude the traditional festivities.

At the April 21, 2020 City Council meeting staff presented its Post COVID-19 Recreation and Community Services Transition Plan that included the proposed cancellation of several summer community events including Fourth of July. As part of the proposal, City staff would plan and share virtual Fourth of July activities for Milpitas residents. At this meeting, City Council requested staff return with information related to the Fourth of July Fireworks contract, including costs for a Fourth of July fireworks display with no public event, other options for celebrating the day, County guidance related to the event, if any, and status plans for fireworks shows in other nearby cities.

# Analysis:

#### Fireworks Contract

The City of Milpitas is in contract with Fireworks & Stage FX America, Inc. for the annual Fourth of July event and Lunar New Year event. For the Fourth of July event, the contractor provides an electronically fired and synchronized sky concert fireworks show. Due to the current COVID-19 pandemic, Santa Clara County Public Health and State restrictions prohibit large gatherings and the City is thus precluded from holding publicly attended festivities around this event.

Per the contract, "If, for any reason beyond the Consultant's control, including, but not limited to, inclement weather or unsafe conditions, and the Consultant is unable to discharge the display on the scheduled date safely, or should the event for which the City has purchased the display be canceled, the parties shall negotiate a new display date, which shall be within 120 days of the original display date. The City shall reimburse the Consultant for reasonable and documented postponement charges. The postponement charges may include those costs incurred or committed to by the Consultant prior to notification of postponement but shall exclude material that can be reused by the Consultant. If the City has to cancel the display indefinitely, the City will be responsible for reasonable and documented material and labor costs prior to the Notice of Cancellation."

After receiving a determination from the City Attorney's Office, and a letter from Fireworks & Stage FX America, Inc., with additional options outside of the existing contract, the City has four potential options for the Fourth of July 2020 Fireworks display:

- 1. Hold a Fireworks display on Fourth of July per the terms of the contract
- 2. Tentatively plan to hold a Fourth of July 2020 Fireworks display, and should the City decide/need to cancel, notify Fireworks & Stage FX America, Inc. by June 22 and apply those monies towards the Fourth of July 2021 display
- 3. Reschedule the fireworks display to another event to occur on or before Labor Day 2021, with a requested 60 days' notice before the new event date
- 4. Cancel the fireworks display and notify Fireworks & Stage FX America, Inc. by May 8 with no penalties

For above options 1-3 a deposit is required, which is already a compensation requirement in the existing contract. Per Fireworks & Stage FX America, Inc., they are aware that municipalities are responsible for unplanned emergency costs related to COVID-19. Due to this fact they are offering a 50% reduction in their deposit requirements. The deposit would be due on May 15, 2020, and notification of the decision to reschedule to either Fourth of July 2021 or on another date before Labor Day 2021 is June 22, 2020.

# County of Santa Clara guidance

Staff contacted the County of Santa Clara Executive's Office after receiving notice that their annual Fireworks Grant Program was being deferred until receiving further guidance regarding the Shelter-In-Place order. The County advised in an email on April 23 that they have not put forward any guidance regarding fireworks displays due to the uncertainty of where we will be with COVID-19 mitigation efforts during and leading up to July.

# Potential Virtual Fourth of July Event Activities

City staff has explored various options that would allow community members to celebrate the traditional Fourth of July holiday, express patriotic commitment to uniting with the rest of the country to overcome the current pandemic, and to feel emotionally connected to friends and neighbors, while still maintaining appropriate social distancing.

Staff is proposing several activities to celebrate the day. Activities would be marketed through social media, print advertising, signage and community partnerships, as a weeklong "United! Spirit of Milpitas, Spirit of America!" virtual event. Residents could participate in fun, simple, collective activities to show their community spirit and patriotism. For example, "United! Spirit of Milpitas, Spirit of America!" Week might kick off with an activity where residents are invited to decorate their homes with flags, and yard signs announcing their household's participation.

#### The week could also include:

- Public decoration of City Hall, such as red, white and blue bunting, large flag
- Use of electronic billboard messaging and fireworks graphics
- Virtual Community Center Fourth of July Activities special holiday games, crafts, and recipes
- Online gallery of patriotic home décor
   residents invited to share pictures on social media
- Fourth of July Spirit of Milpitas slide show residents invited to submit photos for a festive slide show of Milpitas Fourth of July holidays and history, set to music and posted online and broadcast on Milpitas Cable Channel 15
- "United! Spirit of Milpitas, Spirit of America" window/balcony/yard signs via free, downloadable templates
- "Spirit of Giving" Blood Drive, Food Drive, Student Backpack Supply Drive: community groups will be
  invited to host or coordinate community drives where residents can support their neighbors to
  overcome coronavirus and/or help neighbors who have lost jobs

The costs to hold a Fireworks display with no public gathering component and Virtual Event are estimated at the below:

Cost Type	Cost	Subtotal/Total
Fireworks Display		
Staffing (Fire, PD, PW, Rec)	\$24,790	
Fireworks Contract	\$23,000	
Fencing Contract	\$10,000	
Marketing	\$750	Subtotal: \$58,540
Other Events		
Staffing	\$750	
Supplies/Decoration	\$3,000	
Marketing	\$1,200	Subtotal: \$4,950
		TOTAL: \$63,490

#### Key considerations for a Fireworks show

Based on COVID-19 transitions in other countries and guidance from the State and County, it is likely that social distancing and crowd size limits will be in effect on July 4. Hosting a Fireworks show with no event will present some challenges. Even without a planned event, the show would likely draw not only residents, but also non-residents and the City would need to staff the show in anticipation of this scenario.

Public Safety officers and rental fencing will be required to keep audience members out of the immediate area, however, it will be difficult to prevent people from gathering in crowds in nearby open spaces or to enforce crowd limits. The fireworks, fencing, Police, Fire, Public Works, and Recreation presence for an audience-free firework display, is estimated to cost approximately \$58,540.

#### Estimated costs for various scenarios

The costs for various Fourth of July event scenarios are itemized below:

- 1. No show or events: \$0
- 2. Virtual Fourth of July Events only: \$4,950
- 3. Fireworks show only (no public gathering): \$58,540
- 4. Fireworks show and Virtual Events: \$63,490

# Firework events in nearby cities

After the Santa Clara County Public Health Department announcement of the extension of the Shelter in Place (SIP) Order through May 31, 2020, cities and/or districts that typically hold a 4<sup>th</sup> of July Fireworks Show began to announce their cancellations. There are approximately 12 immediate Bay Area cities that hold Fourth of July fireworks shows. These shows are provided by a city, county fair, or major event venue (i.e. Great America). At the time of the draft of this Agenda Report, the following cities or districts have officially announced their fireworks show cancellation for 2020: Berkeley, Redwood City, San Jose (Almaden Valley). The other nine (9) cities have not yet announced the cancellation of their fireworks show.

# **Fiscal Impact:**

The Recreation and Community Services is budgeted at the following direct costs for the Fourth of July Event for the FY 2019-20: Contracts in the amount of \$71,000 and Supplies in the amount of \$10,000. Staff costs for the day of the event are approximately \$57,000 and are allocated in each respective department's annual budget. The total approximate costs for a traditional Fourth of July event are \$138,000 and are included in the FY 20-21 Budget. Depending on Council direction on the options, there could be an approximate cost savings ranging from \$74,510 to \$138,000. Any cost savings could be allocated to the Budget Stabilization Reserve to offset further potential revenue losses related to COVID-19, in the General Fund.

# **Recommendation:**

Receive staff report and provide direction on the 2020 Fourth of July Fireworks display and virtual event.

# **Attachments:**

- a) Memo from City Attorney on the Fourth of July Fireworks Agreement b) Letter from vendor Fireworks & Stage FX America, Inc.



# Memorandum

**To:** Mayor Tran and Honorable City Council

From: City Attorney's Office

**Date:** May 1, 2020

**Re:** Fourth of July Fireworks Contract

# **SUMMARY**

The City Council has directed City staff, including the City Attorney's Office, to review the City's existing fireworks Agreement for the Fourth of July event to determine what options exist under the Agreement based on the current and future County Order. The Professional Services Agreement ("Agreement") between the City and Fireworks & Stage FX America, Inc. ("Contractor") provides for the following options:

- 1. <u>Modify the Scope of Work of the Existing Agreement</u>: Under Section 3 of the Agreement, the City could consider modifying the Agreement's scope of work to be more consistent with any future County Order. The City would need to evaluate any additional costs to the City and Consultant associated with such changes.
- 2. <u>Suspend the Work Contemplated</u>: Under Section 6 of the Agreement, the City could suspend performance, as permitted under the Agreement, but this would not necessarily cancel the contract.
- 3. <u>Cancel the Agreement</u>: Under Exhibit A to the Agreement and Section 17 of the Agreement, the City can terminate the Agreement. If the City terminates the Agreement, the City will be responsible for any costs incurred by the Consultant prior to cancellation.

# **Modify the Scope of Work of Existing Agreement**

The Agreement allows for flexibility in modifying the Agreement's scope of work. Specifically, section 3 of the Agreement (Additional Work) provides:

If changes in the work seem merited by Consultant or the City, and informal consultations with the other party indicate that a change is warranted, it shall be processed in the following manner: a letter outlining the changes shall be forwarded to the City by Consultant with a statement of estimated changes in fee or time schedule. An amendment to this Agreement shall be prepared by the City and executed by both Parties before performance of such services, or the City will not be required to pay for the changes in the scope of work. Such amendment shall not render ineffective or invalidate unaffected portions of this Agreement.

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The fireworks event is scheduled to take place at 9 pm on the evening of July 4th, where the show will be fired from the Milpitas Sports Center Little League Fields. (Exhibit A to Agreement (Scope of Work).) However, pursuant to the Santa Clara County shelter-in-place order, which has been extended through May 31, 2020, as well as the statewide shelter-in-place order issued by the Governor in Executive Order N-33-20, all public and private gatherings of any number of people as well as all non-essential services and activities continue to be prohibited, and social distancing requirements must be followed. Violation of the County's order is a criminal misdemeanor punishable by fine, imprisonment, or both. (Health and Saf. Code, § 120295, et seq.) The Agreement's provisions also require the City and Contractor to comply with all applicable federal, state and local laws and regulations and employ appropriate safety measures. (Agreement, §§ 7, 8.) Therefore, the City Council could seek to modify the scope of work to be more consistent with the current or future County Order.

# **Suspension of 2020 Fourth of July Fireworks Show**

The Agreement also allows the City to suspend performance under the Agreement. Specifically, section 6 of the Agreement (Delays in Performance) permits the City to suspend performance for delays caused beyond its reasonable control, including but not limited to, "abnormal weather conditions; floods; earthquakes; fire; epidemics; war; riots and other civil disturbances; strikes, lockouts, work slowdowns, and other labor disturbances; sabotage or judicial restraint." (Agreement, § 6(a).) Should the City wish to invoke this provision, the City will be required to give written notice to the Consultant "within a reasonable time of being prevented from performing" describing the circumstances preventing continued performance and the efforts being made to resume performance of this Agreement. (Agreement, § 6(b).) It will likely be governmental actions taken to combat COVID-19 that will provide the strongest position for the City to claim that it cannot perform under the current Agreement and that it should not be considered to be in default. (See Civ. Code § 1511(1); Restatement Second of Contracts, § 264.) If the City is found to be in default, the Consultant can terminate the Agreement on 30 days' notice.

# **Cancel the Agreement**

Under Exhibit A to the Agreement, it provides that if "for any reason beyond the Consultant's control, including, but not limited to, inclement weather or unsafe conditions, and the Consultant is unable to discharge the display on the scheduled date safely, or should the event for which the City has purchased the display be cancelled, the parties shall negotiate a new display date, which shall be within 120 days of the original display date." (Exhibit A to Agreement (Cancellation of Show).) The City, however, will be required to reimburse the

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<sup>&</sup>lt;sup>1</sup> As stated in Restatement Second of Contracts section 264, "If the performance of a duty is made impracticable by having to comply with a domestic or foreign governmental regulation or order, that regulation or order is an event the non-occurrence of which was a basic assumption on which the contract was made." Civil Code section 1511 further provides that performance of an obligation is excused "[w]hen such performance or offer is prevented or delayed ... by the operation of law." (Civ. Code § 1511(1).)



# BEST BEST & KRIEGER & ATTORNEYS AT LAW

Consultant for reasonable and documented postponement charges; and, if the City cancels the display indefinitely, "the City will be responsible for reasonable and documented material and labor costs prior to the Notice of Cancellation." (Ibid.) To note, the total contract amount for the term of the Agreement (May 1, 2019 to April 30, 2020)<sup>2</sup> is \$26,500 (\$22,500 is budgeted for the fireworks show), for which the Contractor's services are billed to the City on a monthly basis. (Agreement, § 5.)

The City also has the option to terminate any portion or all of the work under the Agreement by giving **ten (10) calendar days written notice** to the Consultant. (Agreement, § 17.) Should the City choose to terminate the Agreement, the Consultant will be owed the reasonable value of services rendered for any portion of the work completed prior to termination. (Ibid.)

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<sup>&</sup>lt;sup>2</sup> The City may extend the term of the Agreement for up to four (4) one (1) year options by providing written notice to the Contractor not later than the last day of the current term. (Agreement, § 5.)



PO Box 488, Lakeside, CA 92040

Toll Free: 800-464-7976, Phone: 619-938-8277 Fax: 619-938-8273

April 15<sup>th</sup>, 2020

Rene Lorentzen City of Milpitas Parks & Recreation 457 E. Calaverous Blvd. Milpitas, CA 95035

Dear Ms. Lorentzen,

Together we are facing a truly unprecedented situation. The Global Corona Virus Pandemic is affecting all of our families, our businesses, our municipalities, our communities and our way of life. During this time, we wanted to reach out and update you on how we are approaching this situation.

First and foremost, our hearts go out to anyone who has been impacted by the virus, either directly or indirectly. Our thoughts are especially with those who are sick to whom we extend our heartfelt wish for full recovery. We are truly inspired by the selfless health care workers around the world who are on the front lines working tirelessly to care for people in need.

With an uncertain future we know it is difficult to plan ahead. To this end we are proposing the following creative solution that will meet your needs once we have a path forward. As you know, it takes a fair amount of pre-planning and labor to put together a fireworks display. Several hundred-man hours are required to make those fireworks magically appear on show day.

To allow us adequate time to safely and properly pack your display, whenever it may be, we propose the following:

- 1) Plan for your display and sign a contract by May 1, 2020. There will be no charge to move the dates as the path forward becomes clearer. If circumstances dictate a postponement to 2021 then you have pre-planned next year's display. We can then move forward packing your display in a safe and efficient manner.
- 2) We understand that municipalities are being burdened with other costs right now like obtaining PPE, etc. Because of that we will take a 50% reduction in our deposit requirements. While we normally receive a 50% deposit to get started on your display, we will accept a 25% deposit due on May 15, 2020. This will allow us to pack your show in good faith knowing that, at some point, it will happen.
- 3) Should the need arise, postpone your show to any future date up to Labor Day, 2021. If it turns the Governor will not allow gatherings on July 4<sup>th</sup> we can reschedule to Labor Day or any future of

you choose. All we ask is enough notice to get permits and pyrotechnicians in place. Only shows planned for the 4<sup>th</sup> of July this year can be re-scheduled for July 4<sup>th</sup>, 2021.

4) We are lowering our liability insurance coverage from \$20 Million to \$6 Million. One client, a major league baseball team, required the extra insurance and that paid for the additional coverage for all of us. With the postponement of their season they have waived this requirement. This coverage amount is still \$4 Million more coverage than most of our competitors offer, so it shouldn't be an issue.

We have an amazing team at Fireworks America that is here for you. This moment reminds us that we're all connected like never before. We're called upon to be our best selves, with patience, understanding and compassion. On behalf of all of us at Fireworks America, we're committed to being your partner and persevering together in all the days and years ahead.

As we go forward, we'll be sure to keep you updated, and know that we always value your questions, ideas and feedback.

Sincerely,

Kevin T. Brueckner, President

J. Scott Danielson, General Manager

Sales Manager, Northern Calif.

n ack



# CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Receive staff report and approve staff recommendation to provide funding in the amount of \$3,000 which will be distributed evenly to Lions Executive Club and Milpitas Rotary Club for the purchase of face covering supplies for community need
Category:	Community Services and Sustainable Infrastructure
Meeting Date:	5/5/2020
Staff Contact:	Renee Lorentzen, 408-586-3409
Recommendation:	Receive staff report and approve staff recommendation to provide funding in the amount of \$3,000 which will be distributed evenly to Lions Executive Club and Milpitas Rotary Club for the purchase of face covering supplies for community need.

# **Background:**

The COVID-19 pandemic has had a huge impact on social and economic environments across the world and has created a public health crisis. COVID-19 has a high rate of transmission, in part because a large percentage of carriers are asymptomatic, or able to pass on the disease without knowing they are infected. In an effort to stop the spread of COVID-19, the CDC is advising the use of simple cloth face coverings.

On April 3, 2020, Santa Clara County issued guidance about face coverings on its website, strongly urging all individuals to wear face coverings or homemade masks when outside of their homes. "Face coverings" refers to bandanas, scarves, towels, or other cloth or fabric worn over the mouth and nose. Face coverings are especially important for activities such as medical appointments, grocery shopping, pharmacy visits, and public transit use, when being near people outside of one's own household is unavoidable. Face coverings do not replace the need for social distancing and should be used along with social distancing and frequent handwashing to prevent the spread of COVID-19. Medical and N95 face masks and nonlatex gloves are still to be prioritized for first responders and medical staff. Face coverings are not recommended while exercising, as they may cause breathing issues. They are also not recommended for children six years old or younger, or for anyone with breathing difficulties. Medical masks, such as N-95 and surgical masks, should be reserved for healthcare settings.

At the April 7, 2020 Council meeting, City Councilmembers asked staff to look at potential partnerships with community organizations to help with the distribution of nonmedical face coverings. Staff reached out to various community organizations and were informed that the Lions Executive Club and Rotary Club were providing free fabric face coverings to Milpitas residents. Since April 3, the Recreation and Community Services Department has also been encouraging residents to make their own face coverings at home via tutorials on the city's Virtual Community Center.

On April 22, 2020, at the direction of the City Council, the City Manager signed an order mandating face coverings in certain essential businesses, under its general police powers related to public health, safety and welfare. This order went into effect on April 24. The new County order, which became effective May 4, also mandates the use of face coverings in essential businesses. At the April 21 Council meeting, Councilmembers also directed staff to analyze the potential of donating City funds to assist those community organizations in their efforts with face coverings for Milpitas residents.

#### **Analysis:**

The Lions Executive Club and Milpitas Rotary Club are working together and accepting donations of funds, materials and pre-made masks, and managing volunteers who are making face coverings for Milpitas residents. The organizations are providing two face covers per Milpitas household while supplies last. Residents are asked to email <a href="MilpitasMasks@yahoo.com">MilpitasMasks@yahoo.com</a> to request face coverings and receive direction on when and where to pick them up. Since April 21, approximately 120 face coverings have been distributed. After a recent reposting of the City's face covering <a href="MilpitasMasks@yahoo.com">MilpitasMasks@yahoo.com</a> to request face coverings have been distributed. After a recent reposting of the City's face covering <a href="MilpitasMasks@yahoo.com">MilpitasMasks@yahoo.com</a> to request face coverings have been distributed. After a recent reposting of the City's face covering <a href="MilpitasMasks@yahoo.com">MilpitasMasks@yahoo.com</a> to request face coverings have been distributed. After a recent reposting of the City's face coverings were received in less than 24 hours.

There are approximately 28,407 households in Milpitas. With face coverings required in essential businesses and recommended for individuals in public settings, the demand for face coverings is high. However, many residents are already procuring or making their own face coverings, so it is not anticipated that the Milpitas Masks initiative will meet the needs of all residents but will instead provide face coverings for those who may not be able to access them in other ways.

It is anticipated that the use of face coverings will be required until there is a vaccine for COVID-19. The Lion's Executive Club and Rotary Club estimate they can make a total of approximately 200 face coverings per week, with each face covering costing \$3 in supplies. Individuals, nonprofits, and businesses have already made donations in the form of face coverings, supplies, and funding.

With the City Council's interest in providing funding towards this effort, staff is recommending using funds from the Community Promotions appropriation. This appropriation is generally used to provide donations or fee waivers for community groups and would be an appropriate source of funding for this initiative.

Staff recommends funding in the amount of \$3,000, which will provide 1,000 masks for at least 500 households in Milpitas. Although this is a fraction of the total number of households in Milpitas, staff is recommending this amount based on capacity for producing these masks, the fact that donations are being provided by many others in the community, and that many households will already have met their face coverings need through other means.

Finally, this \$3,000 expenditure will serve a public purpose by providing funding to non-profit service organizations that will use the funds to buy supplies in order to make face coverings for those in need in the Milpitas community. This funding will ensure that those who need face coverings are able to obtain them thereby promoting the public health of all residents and others during this COVID-19 pandemic.

# **Fiscal Impact:**

As of May 3, 2020, there is a remaining balance of \$15,349 in the City Council Community Promotions-Allocated budget line item budgeted for the annual Library Essay Contest event, plaques and awards, and other expenditures.

#### **Policy Alternative:**

**Alternative:** Provide direction to staff to fund supplies for face coverings at a higher level than staff recommendation.

Pros: A higher level of funding would enable the community partners to provide additional face coverings to Milpitas residents.

Cons: A higher level of funding for this initiative will impact other community initiatives the Council may want to support. Additionally, as stated earlier, the community partners have limited capacity to make the face coverings, and a higher funding level will not affect the speed of production. Community partners are also receiving donations from many other individuals and entities.

Reason not Recommended: The proposed amount appears to be adequate to fund face coverings for the next five weeks. Considering that the community partners will be receiving other funding, supplies, and donated face coverings, the donated funds from the City will likely help sustain this effort over the next two months which time most community members should have acquired face coverings. If additional funding is neede

staff can always bring forward a recommendation for additional funding at that time. Funding the face coverings initiative at the proposed \$3,000 will also retain remaining funding in the community promotions appropriation for other community initiatives deemed important to City Council, or to be placed in the City's contingency reserves to fulfill budgetary shortfalls related to the COVID-19 pandemic.

# **Recommendation:**

Receive staff report and approve staff recommendation to provide funding in the amount of \$3,000, which will be distributed evenly to Lions Executive Club and Milpitas Rotary Club for the purchase of face covering supplies for community need.

# **Attachment:**

None